UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 3, 2010

CBCA 2007-RELO

In the Matter of DANIEL T. GARCIA

Daniel T. Garcia, Alexandria, VA, Claimant.

Mary Eichelberger, Chief, Workforce Management Office, Customs and Border Protection, Indianapolis, IN, appearing for Department of Homeland Security.

DANIELS, Board Judge (Chairman).

Daniel T. Garcia, an employee of the Department of Homeland Security's Customs and Border Protection, was transferred from one permanent duty station to another in June 2008. Mr. Garcia's original travel orders authorized him and his family to travel between duty stations in two of their own vehicles. At his request, the orders were modified to authorize the family to travel in one of the vehicles and to permit the second vehicle to be shipped at government expense. The agency paid for the shipment. More than a year later, however, it demanded that Mr. Garcia repay this cost. The agency believes that its payment was contrary to regulation because no member of the family traveled by commercial means. Mr. Garcia asks the Board to direct the agency to rescind its demand because it authorized the shipment of the vehicle.

The Department of Homeland Security maintains that the Board does not have jurisdiction over this case. According to the agency, Mr. Garcia is covered by a collective bargaining agreement between Customs and Border Protection and the National Treasury Employees Union, and the grievance procedure established in that agreement is the exclusive method for resolving the dispute. Mr. Garcia does not contest the agency's statement that he is covered by the agreement.

The legal grounding for the agency's position is explained in *Rafal Filipczyk*, CBCA 1122-TRAV, 08-2 BCA ¶ 33,886:

> The Civil Service Reform Act provides that generally, collective bargaining agreements between unions and agency management are to provide procedures for the settlement of grievances, and with limited exceptions, the procedures set out in such an agreement "shall be the exclusive administrative procedures for resolving grievances which fall within its coverage." 5 U.S.C. § 7121(a)(1) (2000). The Court of Appeals for the Federal Circuit has consistently held that this law means if a matter is arguably entrusted to a grievance procedure, no review outside that procedure may take place unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedure. *Dunklebarger v. Merit Systems Protection Board*, 130 F.3d 1476 (Fed. Cir. 1997); *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992); *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990) (en banc). Decisions by this Board and its predecessor in settling claims by federal civilian employees for travel and relocation expenses, the General Services Board of Contract Appeals, have consistently applied the statute, as interpreted by the Court of Appeals, to dismiss claims whose resolution is governed by provisions of collective bargaining agreements. *E.g.*, *Margaret M. Lally*, CBCA 791-TRAV, 07-2 BCA ¶ 33,713; *James E. Vinson*, CBCA 501-TRAV, 07-1 BCA ¶ 33,502; *Rebecca L. Moorman*, GSBCA 15813-TRAV, 02-2 BCA ¶ 31,893; *Bernadette Hastak*, GSBCA 13938-TRAV, et al., 97-2 BCA ¶ 29,091.

The collective bargaining agreement which was in effect when Mr. Garcia moved, and when he filed his case with the Board, provided that its grievance procedures "shall be the exclusive administrative procedures available to bargaining unit employees and the parties for resolving grievances which fall within its coverage." The agreement defines "grievance" to include "any issue raised . . . concerning . . . any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment." This case alleges a misapplication of a regulation affecting a condition of employment, so it is a grievance subject to the collective bargaining agreement's exclusive administrative procedures. We therefore may not consider Mr. Garcia's complaint. *See*, *e.g.*, *William Carr*, CBCA 1613-RELO, 09-2 BCA ¶ 34,252; *Michael F. McGowan*, CBCA 1290-RELO, 09-1 BCA ¶ 34,056.

The collective bargaining agreement which is applicable to this dispute contains a provision which specifically excludes various matters from the agreement's grievance procedures. None of these matters includes allegations of misapplication of travel or

relocation regulations. We note that the successor collective bargaining agreement, which became effective on May 17, 2010, excludes from its grievance procedures "[a]ny matter in which the affected employee has elected to appeal through a statutory or regulatory processes [sic]." Whether this provision encompasses travel and relocation claims submitted by covered employees to this Board is a question that may be addressed in the context of a future case that is filed when the current agreement is in effect.

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STEPHEN M. DANIELS
Board Judge